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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 11th September, 2023

No. 13/2/18-HII(2)-2023/13283.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 50/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

ARVIND UPADHYA S/O LATE SHL. SURYA RAM, R/O HOUSE NO.1431/A, SECTOR 30-B, CHANDIGARH. (Workman)

AND

1. THE DIRECTOR/PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Arvind Upadhyia, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below:—

- A. The workman was appointed through the contractor against the post of CSSD Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.

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- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management / GMCH filed LPA No. 426 of 2015, vide which the Hon'ble High Court directed the management/GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed CSSD Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimax Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman

was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was/is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s)/ outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document/letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and/or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim/petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is/are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality.

That being so, the present claim statement is not maintainable and barred by principle of res-judicata and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Arvind Upadhyia examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar-Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch-IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The

Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below:-

Issue No.1 & 2:

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No. 2 is on the management.

15. To prove its case, workman Arvind Upadhyia examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official/Incharge of Establishment-IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of CSSD Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court/Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement/industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement/ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in

previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order/Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of CSSD Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what/which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No. 426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management/GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order/Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH/management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849-LPA-2015 in/and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh *Versus* Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below:—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below:—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no.1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants/DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015/Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH/or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR/claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh/management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimax w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimax as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997/ Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2/GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any

selection process. Hon'ble High Court of Delhi in case of *Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015* held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No.3:

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor/(last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/19-HII(2)-2023/13285.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 51/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

AJAY KUMAR S/O SH. TEK CHAND RIO HOUSE NO.2347, SECTOR 24-C, CHANDIGARH.
(Workman)

AND

1. THE DIRECTOR/PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Ajay Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below:—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshiar Singh, the then ALC. The management challenged the Award of ALC and filed CWP No. 8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management/GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management/GMCH to pay an amount of ₹17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No. 1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.

- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void ab-initio. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No. 1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimax Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimax Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are unfounded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were/are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under:—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides

that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order(s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was/is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was/is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No. 8472 has not attained finality and stand challenged in LPA No. 426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document/letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and/or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim/petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is/are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM

4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Ajay Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar-Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Ajay Kumar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official/Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court/Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement/industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement/ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order/ Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put

to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No. 426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order/Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No. 426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in/and LPA No.426/2015 titled as Government Medical College & Hospital, Chandigarh *Versus* Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below:—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as *Ajay Kumar & Others Versus GMCH-32, Chandigarh* before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below:-

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the trial said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh / management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997/Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer/contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997/ Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the

GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3:

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4:

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 03-07-2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 11th September, 2023

No. 13/2/17-HII(2)-2023/13287.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 49/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

VINOD RAWAT S/O SH. GOVIND SINGH, RO VILLAGE V.P.O. PAURI GARHWAL,
UTTRAKHAND (Workman)

AND

1. THE DIRECTOR/PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Vinod Rawat, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below :—

- A. The workman was appointed through the contractor against the post of Ward Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshier Singh, the then ALC. The management challenged the Award of ALC and filed CWP No.8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management/GMCH filed LPA No.426 of 2015, vide which the Hon'ble High Court directed the management/GMCH to pay an amount of ₹ 17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No.1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.
- C. The workman along with others workmen moved various representations to the management No.1 & 2 for regularisation of their services, but nothing was done by the management.

- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No.1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Ward Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void *ab-initio*. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No.1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimax Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimax Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.1). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No. 8472 of 2002 and interim order(s) passed in LPA No. 426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the

issue was /is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s) / outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was / is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No. 426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document / letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and / or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim / petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is / are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
5. Relief.

8. In evidence workman Vinod Rawat examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Ors. to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No.1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

15. To prove its case, workman Vinod Rawat examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimax Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Ward Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court / Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement / ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order / Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Ward Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what / which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No. 426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No.8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No.426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management / GMCH to pay arrears of ₹17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order/Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH / management No.1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of

wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in and LPA No. 426/2015 titled as Government Medical College & Hospital, Chandigarh Versus Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/- issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex.PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex.PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH / or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR / claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh /management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer/contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement,

thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of **Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3 :

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor / (last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated : 03.07.2023.

(Sd.) . . . ,
(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 11th September 2023

No. 13/2/10-HII(2)-2023/13295.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 42/2020 dated 03.07.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SWARUP PARKASH S/O SH. BISHAN, SINGH CHAUHAN, R/O HOUSE, NO.1738, SECTOR 45, BURAIL, CHANDIGARH NEAR KUMHAR, MOHALLA. (Workman)

AND

1. THE DIRECTOR/PRINCIPAL, GOVT. MEDICAL COLLEGE AND HOSPITAL 'EDUCATION & RESEARCH, CHANDIGARH ADMINISTRATION, SECTOR 32 UT CHANDIGARH.
2. GOVERNMENT OF INDIA MINISTRY OF FAMILY AND HEALTH WELFARE, SECTION 2 THROUGH ITS SECRETARY, NEW DELHI. (Management)

AWARD

1. Swarup Parkash, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that earlier workman filed petition under Section 2-A of the ID Act, reference was sent to the Chandigarh Administration, who further sent referred for adjudication to the Labour Court, U.T. Chandigarh and the same was declined by the then Presiding Officer of the Labour Court, and contractual employee was held not to be employee of Government Medical College & Hospital (GMCH). The present case is filed on the basis of fresh cause of action and on different footings as below:—

- A. The workman was appointed through the contractor against the post of Lt. Attendant. Later on the contractor left. The workman continues to serve more than 240 days continuously without any break. The workman was paid salary by the Director of the GMCH. Thereafter, the workman started claiming regularisation of his services but his services were orally terminated without any show cause notice, charge sheet or without following mandatory provisions of the ID Act.
- B. The workman filed case before the Assistant Labour Commissioner (ALC) under the Minimum Wages Act, including other aggrieved workers. The claim was allowed. The Award was passed by Sh. Hoshier Singh, the then ALC. The management challenged the Award of ALC and filed CWP No. 8472 of 2002 before the Hon'ble High Court of Punjab & Haryana. The writ petition was dismissed. The management/GMCH filed LPA No. 426 of 2015, vide which the Hon'ble High Court directed the management/GMCH to pay an amount of ₹ 17,982/-. The said amount was paid through the Court of Chief Judicial Magistrate, Chandigarh, which the workman received from the Court in view of the Award passed by ALC. In this way workman became the employee of GMCH i.e. management No. 1 & 2. The Award passed by the then Labour Court, U.T. Chandigarh became redundant. The SLP is still pending for adjudication before the Hon'ble High Court.

- C. The workman along with others workmen moved various representations to the management No. 1 & 2 for regularisation of their services, but nothing was done by the management.
- D. The junior workmen to the workman were retained by the management and they are still retained by the management and they are still continuing. Even thereafter, many posts were filled by the management without considering the case of the workman. There are many hospitals under the jurisdiction of Chandigarh Administration, particularly in Sector 48 and many vacancies and many posts of Lt. Attendant are still lying vacant. The management No. 1 & 2 are likely to start recruitment. The workman deserves to be appointed against the post.
- E. Finding no other alternative, workman sent registered legal notice to the management and Union of India. The Union of India vide its letter dated 21.08.2019 replied the legal notice.
- F. The whole action on the part of the management in termination, the services of the workman is illegal, unlawful, unconstitutional and contrary to the mandatory provisions of the ID Act. Said illegal termination deserves to be set aside and the workman deserves to be reinstated with continuity of service, full back wages and consequential benefits.
- G. The workman is not gainfully employed anywhere in India with Government or semi-Government or private organisation.
- H. The cause of action arose in the year 1996, when the workman was employed Lt. Attendant. It further arose when services of the workman terminated illegally without following the mandatory provisions of law. Further cause of action arose when ALC passed the Award in favour of the workman including other workmen and it again arose when department filed CWP, which was dismissed and the department filed LPA and in LPA Hon'ble High Court directed the department to pay ₹ 17,982/- which was paid through cheque by the management. It further arose when ALC directed the workman to approach the Labour Court. The cause of action is recurring.

The claim statement is well within territorial jurisdiction of the present Court. Prayer is made that termination order may be set aside being unlawful, unconstitutional, illegal, null, void and void *ab-initio*. The workman may be reinstated against the same post with continuity of services, full back wages with continuity of service, seniority and all other consequential benefits.

3. On notice management No. 1 & 2 contested the claim statement by filing joint written reply wherein preliminary objections are raised on the ground that the claim statement in fact is a second reference for the same cause of action, praying for setting aside termination of the workman by contractor M/s Enterclimex Security Pvt. Ltd. vide letter dated 31.12.1997 and claiming reinstatement is not legally maintainable being barred by '*res-judicata*' because the workman earlier approached this Court against the aforesaid termination order, which was dismissed by this Court. Further, the second reference on the same cause of action is badly time barred at this stage. The present claim statement is bad for non-joinder of necessary party. The workman was engaged as well as his services were terminated by the contractor M/s Enterclimex Security Co. Pvt. Ltd. The contractor who is necessary party in the present litigation has not been impleaded as a party.

4. Further on merits, it is stated that no fresh cause of action has arisen against the management. The pleas taken by the workman are un-founded. The workman was not engaged by the answering management. As per agreement executed with the contractor, persons engaged by the contractor were / are employees of the contractor for all intents and purposes. The relevant part of contract agreement is re-produced as under :—

"Contract agreement read with clause 10(B.I). The persons deployed by the contractor for work in Government Medical College Hospital, Sector-32, Chandigarh shall be the employees of the contractor for all intents and purposes and in no case, there shall be a relationship of employer and employees between the said persons and the Institute. Clause 10(B.3) provides

that the contractor shall ensure that all the employees should get minimum wages and other benefits as are admissible under various Labour Laws. As such no liability of any contractual worker lies with this institute."

The answering management did not issue any appointment letter to the workman. As such, there is no employer-employee relationship between the answering management and workman.

5. The order passed in CWP No.8472 of 2002 and interim order (s) passed in LPA No.426 of 2015 have no relation or nexus with the issue(s) now sought to be raised by the workman. In the said litigation, the issue was/is regarding rate of wages or wage rate to be paid to the persons engaged by the contractor (s)/ outsourcing agency/agencies. The prayer of the workman in the claim petition filed before the Authority under The Minimum Wages Act, U.T, Chandigarh was limited to the payment of difference of wages between the minimum rates of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor challenging the termination order and claiming re-instatement was not the issue in said litigation. The Hon'ble High Court had directed to ensure the Payment of Minimum Wages in view of the statutory provisions contained in The Minimum Wages Act and did not hold that the workmen are employee of the answering management and there was/is employee-employer relationship between the answering management and workman. In para 3 of legal notice dated 13.08.2018 the workman himself has admitted that his claim against termination of his services by the contractor vide letter dated 31.12.1997 was rejected by the Tribunal. The aforesaid order in CWP No.8472 has not attained finality and stand challenged in LPA No.426/2015 which is pending for adjudication and only interim orders are passed in said LPA. Said interim order is of no avail to the workman. The workman was employed as well as his services were terminated by the contractor and not by the answering management. Thus, question of regularisation does not arise, especially when the workman is not working in the GMCH and has not placed on record any document /letter to show that he was ever appointed by the answering management. The workman has not given any details of so called representation, therefore answering management is not in a position to respond the averments made and reserve its right to respond and reply as and when the workman specify or attach the so-called representations. The persons engaged by the contractor or outsourcing agency are employees of the contractor concerned and not of the answering management. The contractor appoints the Attendant(s) on contract basis through outsource at their own. Therefore, the workmen were employees of the contractor concerned for all intents and purposes. The answering management has nothing to do or has no role in the engagement and/or termination by the contractor. Further, the workman earlier had approached this Court against the termination by the contractor. The said claim/petition was dismissed. As such, the pleas sought to be advanced by the workman that junior had been retained carry no credence and is/are of no avail to the workman. The claim putforth by the workman through his counsel by way of legal notice dated 13.08.20218 was duly examined and a detailed reply dated 26.11.2019 was sent to the workman's counsel rejecting his claim. It is denied for want of knowledge that workman is not gainfully employed. The present claim statement is abuse of law. The reliance being placed upon orders passed in CWP and LPA are no avail to the workman when the workman has already availed the remedy against his termination and this Tribunal dismissed his claim statement which has now attained finality. That being so, the present claim statement is not maintainable and barred by principle of *res-judicata* and barred by limitation. The territorial jurisdiction of the Court is not disputed. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with costs being not legally maintainable and devoid of merits.

6. The workman filed replication wherein the contents of written reply except admitted facts, are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 04.03.2022:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Whether the claim of the workman is barred by principle of *res-judicata* ? OPM
3. Whether the claim of the workman is time barred ? OPM
4. Whether the claim of the workman is bad for *non-joinder* of necessary party ? OPM
5. Relief.

8. In evidence workman Swarup Prakash examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 20.04.2023 Learned Representative for the workman tendered documents Exhibit 'W1', Exhibit 'W2' and Mark 'A' to Mark 'E'.

Exhibit 'W1' is the certified copy of Execution Application bearing filing No. 2578/2016 before the court of Ld. CJM, Chandigarh, titled as Shri Ajay Kumar & Ors. Vs Govt. Medical College & Hospital, Sector 32, Chandigarh & Ors. seeking to execute the order dated 26.02.1999 in Application No.10/1998 passed by the court of Shri S. S. Chauhan, Authority under the Minimum Wages Act and further in view of the order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No.426 of 2015.

Exhibit 'W2' is certified copy of zimni order dated 11.07.2016, 23.08.2016, 01.10.2016, 09.11.2016, 28.11.2016, 07.12.2016, 15.12.2016, 05.12.2016, 21.12.2016, 03.01.2017, 16.01.2017, 21.01.2017, 04.02.2017, 01.03.2017, 05.04.2017, 29.04.2017, 30.05.2017, 31.07.2017, 29.09.2017, 02.12.2017, 06.12.2017 relating to the court of Shri Akashdeep Mahajan, Addl. Civil Judge (Sr. Div.), Chandigarh, pertaining to execution application filing No. 2578 of 2016.

Mark 'A' is photocopy of application dated nil moved by workmen Sohan Singh & Others to G.M.C.H. through Shri S.K. Guleria, Advocate regarding joining report of 18 workmen.

Mark 'B' is photocopy of order dated 05.12.1995 of Medical Superintendent, G.M.C.H, Chandigarh.

Mark 'C' is photocopy of joining report dated 03.05.1995 of Bikram Singh S/o Surjan Singh.

Mark 'D' is photocopy of joining report dated 08.05.1995 of Sohan Singh.

Mark 'E' is photocopy of joining report dated 03.05.1995 of Lalit Kumar S/o Ramanand.

9. On 02.05.2023 Learned Representative for the workman tendered document Exhibit 'W3' i.e. copy of order dated 19.03.2015 passed by the Hon'ble High Court in CMs-848 and 849-LPA-2015 in/and LPA No. 426 of 2015 titled as Govt. Medical College & Hospital, Chandigarh Versus Authority appointed under Minimum Wages Act and closed the evidence of the workman in affirmative.

10. On the other hand, management examined MW1 Sanjay Kumar - Senior Assistant, Establishment Branch IV, GMCH, Sector 32, Chandigarh who tendered his affidavit Exhibit 'MW1/A'.

11. The management also examined MW2 Surinder - Junior Assistant, Establishment Branch - IV, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with document Exhibit 'MW2/1' i.e. copy of letter dated 31.12.1997 issued by Chief Controller for Enterclimax Security to The Director Principal, GMCH, Sector 32, Chandigarh relating to the subject of removal of the contractual Ward Attendants.

12. On 03.07.2023 Learned Law Officer for the management closed the evidence.

13. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 & 2 :

14. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove issue No.1 is on the workman and onus to prove issue No. 2 is on the management.

15. To prove its case, workman Swarup Parkash examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W3' and Mark 'A' to Mark 'E'.

16. To rebut the case of the workman, management examined MW1 Sanjay Kumar, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written reply which are not reproduced here for the sake of brevity.

17. For corroboration Learned Law Officer for the management referred to testimony of MW2 Surinder, who vide his affidavit Exhibit 'MW2/A', apart from the contents of written reply, deposed that these cases are very old i.e. way back of year 1995-96 and the dealing official / Incharge of Establishment - IV Branch had supplied the record available for drafting reply in the instant matter to legal cell. No such joining report, salary disbursement and muster roll since 1995 of workman is traceable. As per record, the workman was deployed on contract basis through outsource by the contractor M/s National Security & Allied Services, Jalandhar. Therefore, all the record of outsource employee, is concerned with the contractor and termination by contractor M/s Enterclimex Security Co. Pvt. Ltd. To support oral version of MW2, Learned Law Officer referred Exhibit 'MW2/1'.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed against the post of Lt. Attendant through contractor National Security & Allied Services, Head Office Punjab (as mentioned in the legal notice dated 13.08.2018 relied upon by the workman). The workman has alleged that his services were terminated without issuing any show cause notice, charge sheet or without following the mandatory provisions of the ID Act. The workman in his claim statement did not mention the date of appointment and date of termination of his services. However, it is own case of the workman that previously he filed a claim statement before the Labour Court/Industrial Tribunal, U.T. Chandigarh challenging his termination order and the said claim statement / industrial dispute reference was dismissed by this Court (in para 3 of legal notice dated 13.08.2018, relied upon by the workman, the date of award passed by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh is mentioned as 05.03.2007). In the entire pleadings the workman did not mention the particular and details of the previous claim statement wherein he had challenged his termination order. The workman also did not disclose the particular of said claim statement and also did not mention the date of passing of Award vide which the aforesaid claim statement/ID Act has declined by this Court. However, from the copy of legal notice dated 13.08.2018 (relied upon by the workman) in para 3 it is mentioned that his clients filed a case before Labour Commissioner, U.T. Chandigarh for terminating their services. The reference was sent to the appropriate Government of U.T. Chandigarh and reference was also sent to the Labour Court for adjudication but their claim was dismissed by the Labour Court-cum-Industrial Tribunal, Chandigarh vide order dated 05.03.2007. The workman did not place on record the copy of pleadings in the previous industrial dispute reference decided vide Award dated 05.03.2007 by this Court and also did not place on record copy of the said Award dated 05.03.2007. However, the fact remains that the workman in previous industrial dispute reference challenged his termination order and the said previous industrial dispute reference was dismissed by this Labour Court-cum-Industrial Tribunal vide order dated 05.03.2007. Till date the workman has not challenged the order/Award dated 05.03.2007, thus the same has become final.

19. It is own plea of the workman that he was appointed to the post of Lt. Attendant by the contractor and later on the contractor left. The workman in the claim statement did not mention up to which year he remained under the contractor or in which month or year the contractor left. However, when put to cross-examination the workman states that he worked as outsource employee in GMCH up to March 1998, he

refused to work under new outsource agency, therefore, he was terminated from job. He was not issued any termination letter or relieving letter by the GMCH, Sector 32, Chandigarh. After termination he filed a case seeking payment of minimum wages before Assistant Labour Commissioner, U.T. Chandigarh. The workman did not plead that till what/which date he was paid salary by the contractor.

20. The workman has alleged that although his previous claim statement whereby he challenged the termination order and sought reinstatement was dismissed by this Court but now present cause of action arises in his favour in view of the interim order passed by the Hon'ble High Court in LPA No.426/2015. Learned Representative for the workman argued that the workman filed claim application before the Assistant Labour Commissioner, U.T. Chandigarh under the Minimum Wages Act, which was allowed by the Assistant Labour Commissioner. The management challenged the order of Assistant Labour Commissioner by filing CWP No. 8472 of 2002 which was dismissed. Thereafter management of GMCH filed LPA No. 426/2015 before the Hon'ble High Court wherein interim order has passed and direction was issued to the management/GMCH to pay arrears of ₹ 17,982/- to the workman. The management paid the said arrears to the workman by cheque and said amount was received by the workman in the Court of CJM, Chandigarh. LPA is pending. Learned Representative for the workman laid much stress upon the fact that since the payment is made by management of GMCH to the workman, therefore the previous order/Award dated 05.03.2007, whereby the claim of the workman challenging termination order and seeking reinstatement was dismissed has become redundant. The workman has become employee of GMCH/management No. 1 & 2 therefore entitled to regularisation of his services.

21. On the other hand, Learned Law Officer for the management argued that claim application before the ALC is limited to the payment of difference of wages between the minimum rate of wages notified by the Chandigarh Administration and the wage actually paid to the workman by the contractor. The termination order was neither under challenge nor an issue before the ALC. The payment of difference of wages made by the management in compliance with the direction of Hon'ble High Court in LPA No.426/2015 in no manner has any connection with the termination or regularisation of services of the workman. To my opinion, it is undeniable fact that the workman filed claim application before the ALC, U.T. Chandigarh seeking recovery of difference of wages of Minimum Wages Act and in the said case neither the termination order was under challenge nor in issue. The matter confined in claim application before the ALC was payment of difference of wages only. In this regard, AW1 in his cross-examination stated that after termination he filed a case seeking payment of wages before the ALC, U.T. Chandigarh. The workman has placed on record copy of order dated March 19, 2015 passed by the Hon'ble High Court in CMs 848 and 849 - LPA-2015 in/and LPA No. 426/2015 titled as Government Medical College & Hospital, Chandigarh *Versus* Authority appointed under the Minimum Wages Act vide Exhibit 'W3'. The relevant portion of Exhibit 'W3' is reproduced as below :—

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015."

Admittedly the LPA No.426/2015 is pending before the Hon'ble High Court. Exhibit 'W2' is the copy of all the zimni orders passed in the execution proceedings titled as **Ajay Kumar & Others Versus GMCH-32, Chandigarh** before the Court of ACJ(SD). The relevant portion of order dated 07.12.2016 of ACJ(SD), Chandigarh is reproduced as below :—

"Sh. Yadwinder Singh, Law Officer, GMCH-32 Chandigarh for the respondents no. 1 & 2 suffered a statement that he has brought 29 demand drafts total amounting to Rs.5,21,438/-

issued in favour of 29 persons i.e., decree holders mentioned in the execution application as per the detailed description given in letter dated 02.11.2016 which is already Ex. PX. Kindly placed on record all the 29 demand drafts as mentioned in Ex. PX and it is requested that the demand drafts shall be handed over to the decree holders on their furnishing surety as per the orders of Hon'ble High Court, Chandigarh. In view of above, the above said demand drafts are taken and Ahlmad of this court is directed to tagged the above said drafts in a proper way.

Learned counsel for the applicant undertake to furnish surety bonds within a week in view of order passed by the Hon'ble High Court, Chandigarh. Statement recorded separately. Now, to come up on 15.12.2016 for furnishing the security by the applicants."

22. It is undeniable fact that all the applicants/DHs of execution proceedings furnished requisite surety and the amount of ₹ 17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No. 426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM / ACJ(SD), Chandigarh.

23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH/or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court, Chandigarh dismissing the IDR/claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh/management No. 1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997 / Exhibit 'MW2/1' brought into evidence by MW2. Exhibit 'MW2/1' is the letter of termination the services of the workman by the employer/contractor Enterclimex w.e.f. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997/ Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2/GMCH Sector 32, Chandigarh. AW1 in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998. He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AW1 would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi in case of ***Desh Deepak Srivastava Versus Delhi High Court & Another, CWP (C) No.9570/2015*** held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.

24. Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not

challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of *res-judicata* under Section 11 of CPC.

25. Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman.

Issue No. 3:

26. Onus to prove this issue is on the management.

27. The workman has alleged that his services were terminated in the year 1998. He raised 2nd time industrial dispute by raising demand notice in the year 2019 and presented the present claim on 25.08.2020 i.e. after about 22 years of raising demand notice. Thus, the present claim statement is barred by limitation.

28. Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 4 :

29. Onus to prove this issue is on the management.

30. The contractor/(last contractor i.e. Enterclimex) was the employer of the workman. The workman has challenged his termination of services without impleading his employer, who was a necessary party. Thus, the present claim statement is bad for non-joinder of necessary party.

31. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 03-07-2023.

Secretary Labour
Chandigarh Administration.

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